JUDGMENT OF THE COURT (Sixth Chamber)
17 July 1997 *

In Case C-90/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Østre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between

Haahr Petroleum Ltd

and

Åbenrå Havn,

Ålborg Havn,

Horsens Havn,

Kastrup Havn NKE A/S,

Næstved Havn,

Odense Havn,

Struer Havn,

* Language of the case: Danish.

Vejle Havn,

also represented: **Trafikministeriet,**

on the interpretation of Articles 9 to 13, 84 and 95 of the EEC Treaty,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray and P. J. G. Kapteyn (Rapporteur), Judges,

Advocate General: F. G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Haahr Petroleum Ltd, by Lars N. Vistesen, of the Copenhagen Bar,

— Åbenrå Havn, Ålborg Havn, Horsens Havn, Kastrup Havn NKE A/S, Næstved Havn, Odense Havn, Struer Havn and Vejle Havn, by Per Magid and Jeppe Skadhauge, of the Copenhagen Bar,

— the Trafikministeriet (Danish Ministry of Transport), by Karsten Hagel-Sørensen, of the Copenhagen Bar,

— the United Kingdom Government, by Lucinda Hudson, of the Treasury Solicitor's Department, acting as Agent, and Stephen Richards and Rhodri Thompson, Barristers,

— the Commission of the European Communities, by Anders Christian Jessen and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Haahr Petroleum Ltd, represented by Isi Foighel, of the Copenhagen Bar, and Lars N. Vistesen; of Åbenrå Havn, Ålborg Havn, Horsens Havn, Kastrup Havn NKE A/S, Næstved Havn, Odense Havn, Struer Havn and Vejle Havn, represented by Per Magid and Jeppe Skadhauge; of the Trafikministeriet, represented by Karsten Hagel-Sørensen; and of the Commission, represented by Anders Christian Jessen, Enrico Traversa and Richard Lyal, of its Legal Service, acting as Agent, at the hearing on 9 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 27 February 1997,

gives the following

Judgment

1 By order of 8 March 1994, received at the Court on 15 March 1994, the Østre Landsret (Eastern Regional Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty several questions on the interpretation of Articles 9 to 13, 84 and 95 of the EEC Treaty.

2 Those questions were raised in proceedings between Haahr Petroleum Ltd, a company which sells petrol and other petroleum products, and the commercial

ports of Åbenrå, Ålborg, Horsens, Kastrup, Næstved, Odense, Struer and Vejle ('the defendant ports') concerning the charging by those ports of an import surcharge of 40% which until 31 March 1990 was levied in Denmark in addition to goods duties on all imported goods loaded, unloaded, or otherwise taken on board or landed within Danish commercial ports or in the deep-water approach channels to those ports.

3 In Denmark, authorization to establish a commercial port, that is to say, a harbour used for the commercial transport of goods, vehicles and persons, is granted by the Minister for Transport. In accordance with the system of ownership and control, a distinction may be drawn between ports under local authority control, which are independent bodies answerable to the local authority, the port of Copenhagen, which has its own special legal status, the State-owned ports, operated by the Ministry of Transport, and private ports, which are operated by their owners in accordance with the conditions laid down in the relevant authorization.

4 Part of the ports' revenue comes from duties paid for their use by users. Thus shipping and goods duties must be paid for berthing, and for embarking and disembarking goods, vehicles or persons. Special duties are charged for the use of cranes, warehouses and storage facilities.

5 Under Law No 239 of 12 May 1976 on commercial ports (*Lovtidende* A of 1976, p. 587, 'the 1976 Law'), which applied until 31 December 1990, the competent minister, now the Minister for Transport, was responsible for setting the rate of shipping and goods duties after negotiations with the management of the commercial ports. It was ministerial practice to calculate the rates on the basis of the economic conditions obtaining in the 22 provincial ports regarded as being the most important in terms of commercial traffic volume and to set them so as to enable

the ports to cover their operating and maintenance expenditure and to ensure a reasonable degree of self-financing for necessary extensions and modernization.

6 The shipping and goods duties were set out in regulations for each port drawn up in accordance with the common regulations prepared by the competent minister for all commercial ports.

7 Under the regulations applicable at the material time, shipping duty was payable by all ships and craft and all floating installations berthing in the port or in the deep-water approach channels. It was calculated as a fixed amount according to deadweight tonnage or gross registered tonnage either each time the vessel put into port or as an amount payable monthly. Vessels of under 100 deadweight or gross registered tonnes were exempt from payment of shipping duty.

8 Goods duty was payable on all goods loaded, unloaded, or otherwise taken on board or landed within the port or in the deep-water approach channels. It represented a certain amount per tonne. There were exemptions and special rates for certain goods. In accordance with those rules, goods duty was to be paid by the vessel or its local agent before the ship's departure, but was ultimately borne by the recipient and sender respectively of the goods from whom reimbursement could be claimed.

9 During the period relevant to the case in the main proceedings, a surcharge of 40% was added to the goods duty levied on goods imported from abroad. It appears from the order for reference that that import surcharge of 40% was introduced in the context of a general adjustment to the level of port duties made in 1956 in the light of a report by the committee on rates of duty for ports and bridges set up by the Ministry of Public Works in 1954.

10 According to that committee, the increase considered necessary in the rates of duty should apply to both shipping and goods duties, but had 'to be made in such a way that its objective (increasing income for the ports) is not jeopardized through commercial traffic being totally or partially diverted from the ports with the result that goods are instead conveyed by road or rail'. The committee on rates of duty for ports and bridges therefore proposed, so far as goods duty was concerned, 'to concentrate on the turnover of foreign goods inasmuch as the greater part of the goods which are imported into Denmark are most naturally transported by sea and the danger that this business will be diverted from ports merely if the goods duty is increased can therefore to some extent be discounted'. The committee also considered that 'the most appropriate solution [was] that the extra revenue to be generated through goods duty should be derived exclusively from an increase in the duty on imported goods', since the duty on imported goods such as fertilizers and feedstuffs for agriculture and raw materials for industry was lower than duty on finished products and an increase in duty on those imports would therefore have a much more limited effect on those sectors than an increase in duty on exports. Finally, the risk of domestic traffic deserting the ports in favour of land transport led the committee on rates of duty for ports and bridges to suggest, on the one hand, exempting small craft from the proposed increase in shipping duty and, on the other, allowing vessels of up to 100 tonnes the lower rates usually allowed in respect of vessels of less than 100 tonnes.

11 The import surcharge of 40% was abolished by the Minister for Transport with effect from 1 April 1990.

12 Between 1984 and 31 March 1990, the date on which the import surcharge was abolished, Haahr Petroleum imported crude petroleum and petrol from other Member States and from non-member countries through the defendant ports into Denmark in order to refine and sell them. All those ports are under local authority control, except Kastrup, which is a private port.

13 By application lodged on 5 November 1991 at the Østre Landsret, Haahr Petroleum sought an order for the defendant ports to refund all import surcharges levied on it from 1 January 1984 to 31 March 1990, totalling DKR 9.6 million.

14 In support of its application, Haahr Petroleum claimed on the basis of Articles 9 and 12 of the Treaty that the import surcharge in dispute was tantamount to a charge having effect equivalent to a customs duty and that, as from 1 January 1973, the Kingdom of Denmark was not entitled to levy customs duties or charges having equivalent effect. Referring to Joined Cases 37/73 and 38/73 *Diamantarbeiders* v *Indiamex* [1973] ECR 1609, concerning Articles 18 to 28 and 113 of the EEC Treaty, Haahr Petroleum maintained moreover that 'subsequent to the introduction of the Common Customs Tariff, all Member States are prohibited from introducing, on a unilateral basis, any new charges or from raising the level of those already in force'. Lastly, Haahr Petroleum objected to the time-barring of its action under the relevant national rules (which provide for a limitation period of five years), on the ground that a claim based on Community law cannot be time-barred either where the delay in making the claim was due to late transposition of a provision of Community law into the national legal order (Case C-208/90 *Emmott* [1991] ECR I-4269) or where the claim is based on the delayed abolition of a provision of national law incompatible with Community law.

15 The defendant ports considered that the import surcharge should be assessed under Title IV of the Treaty, which relates to transport, as argued by the Ministry of Transport which intervened in their support, or under Article 95 of the Treaty, since the 40% surcharge was a constituent part of the goods duty which, in its turn, formed part of a general system of domestic charges under which differentiation in the rates of duty was compatible with the Treaty provisions. Furthermore, they claimed that Haahr Petroleum's application was time-barred as regards duties paid before 5 November 1986 (that is to say, five years before the action was brought before the Østre Landsret) and that the circumstances of the case revealed no factor capable of justifying departure from the general rules of relevant national law.

16 The Ministry of Transport claimed that the duties in question pursued a transport policy objective in so far as, first, uniformity of duties was intended to maintain competition between the ports and road transport within Denmark and to ensure that ports did not compete with one another by means of those duties and, second, the import surcharge was supposed to guarantee the financing of the ports without diverting goods traffic to road or rail. As evidence that the objective of the import surcharge was not to affect imports of goods but rather concerned the means of transport, it pointed out that the largest port in terms of international trade, the port of Copenhagen, did not charge that duty.

17 Those were the circumstances in which the Østre Landsret decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is the special 40% import surcharge on the goods duty ordinarily levied to be regarded as coming under the EEC Treaty rules on the Customs Union, including Articles 9 to 13, or under Article 95 of that Treaty?

2. Are the EEC Treaty rules on the Customs Union, including Articles 9 to 13, or Article 95 of that Treaty to be understood as meaning that it is incompatible with those provisions to impose a special 40% import surcharge on the goods duty ordinarily levied if that import surcharge is imposed exclusively on goods imported from outside Denmark?

3. If Question 2 is answered in the affirmative, in what circumstances can such a duty be justified on the ground that it represents consideration for a service provided or on grounds of transport policy (Article 84(2) of the EEC Treaty)?

4. If the special import surcharge is held to be incompatible with the EEC Treaty, does that finding apply to the whole of the surcharge levied since Denmark's accession to the EEC Treaty or does it apply only to the increase in the import surcharge which came into effect thereafter?

5. If it is held that the import surcharge is incompatible with Community law, will the fact that a claim for reimbursement may be time-barred under national rules on limitation periods have the full or partial effect that the import surcharge cannot be reimbursed?'

Questions 1, 2, 3 and 4

18 By its first four questions, which it is appropriate to consider together, the national court seeks clarification of the notion of a charge having an effect equivalent to a customs duty contained in Articles 9 to 13 of the Treaty, and of the notion of discriminatory internal taxation referred to in Article 95 of the Treaty, where a Member State levies an import surcharge of 40% on goods imported by ship from another Member State in addition to the general goods duty payable on all goods loaded, unloaded, or otherwise taken on board or landed within the ports of the first Member State or in the deep-water approach channels to those ports.

19 The Court has consistently held (see, *inter alia*, Case C-266/91 *CELBI* [1993] ECR I-4337, paragraph 9) that provisions relating to charges having equivalent effect and those relating to discriminatory internal taxation cannot be applied together, so that under the system of the Treaty the same imposition cannot belong to both categories at the same time.

20 The Court has also consistently held (see, in particular, Case C-45/94 *Cámara de Comercio, Industria y Navegación, Ceuta* [1995] ECR I-4385, paragraph 28) that any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the EEC Treaty.

However, such a charge may not be so characterized if it forms part of a general system of internal dues applying systematically to categories of products according to objective criteria applied without regard to the origin of the products, in which case it falls within the scope of Article 95 of the Treaty.

21 In the first place, a duty such as the general goods duty at issue in the main proceedings, forms part, together with shipping duty in particular, of a general system of internal taxes payable for the use of commercial ports and their facilities.

22 Second, it should be noted that with the exception of certain classes of exempt goods that tax is payable on all goods loaded, unloaded, or otherwise taken on board or landed within commercial ports, whether those goods arrive in port from another Member State or from another commercial port in the same Member State.

23 Third, it should be observed that that duty is imposed on goods, both domestic and imported, at the same time and in accordance with the same objective criteria, namely when they are taken on board or put ashore and according to the type of goods and their weight.

24 Fourth, an import surcharge such as that in issue in the main proceedings, which increases the general goods duty levied on imported goods, is an integral part of the duty itself and is not a separate duty, since the amount of the surcharge is expressed as a percentage of the duty and the surcharge and the duty are levied on the same legal basis, at the same time, in accordance with the same criteria and through the same authorities and the revenue raised thereby is paid to the same recipients.

25 That being so, the fact that the import surcharge is payable *ex hypothesi* solely on imported goods and that the origin of the goods determines the amount of the duty to be levied cannot remove the tax in general or the surcharge in particular from the scope of Article 95 of the Treaty; accordingly, their compatibility with Community law must be assessed in the light of that provision and not Articles 9 to 13 of the Treaty.

26 Here, it should first be stated that the Court has consistently held that Article 95 of the Treaty applies only to products from the Member States and, where appropriate, to goods originating in non-member countries which are in free circulation in the Member States. It follows that that provision is not applicable to products imported directly from non-member countries (Case C-130/92 *OTO* [1994] ECR I-3281, paragraph 18).

27 Next, Article 95 of the Treaty provides that no Member State is to impose, directly or indirectly, on the products of other Member States internal taxation in excess of that imposed on similar domestic products or of such a nature as to afford indirect protection to other domestic products. It is therefore beyond question that application of a higher charge to imported products than to domestic products or application to imported products alone of a surcharge in addition to the duty payable on domestic and imported products is contrary to the prohibition of discrimination laid down in Article 95.

28 The defendant ports claim, however, that the import surcharge is equivalent to a differential goods duty compatible with Article 95 of the Treaty as interpreted by the Court, in so far as such differentiation is based on objective criteria. They argue in particular that that differential rate of taxation is justified on the two grounds that, in the context of competition with other means of transport, international maritime transport is better able to bear the burden of the surcharge and that such transport is in general carried out by larger vessels making greater use of port facilities than the smaller vessels used in domestic transport. From the

same point of view, the Ministry of Transport considers that the surcharge does not constitute unlawful discrimination, since it represents payment for the general extra costs involved for the ports in supplying services to the larger vessels used for importing goods.

29 It is true that, as the Court has consistently held (Case 196/85 *Commission* v *France* [1987] ECR 1597, paragraph 6), at its present stage of development Community law does not restrict the freedom of each Member State to lay down tax arrangements which differentiate between certain products, even products which are similar within the meaning of the first paragraph of Article 95 of the Treaty, on the basis of objective criteria, such as the nature of the raw materials used or the production processes employed. Such differentiation is compatible with Community law, however, only if it pursues objectives of economic policy which are themselves compatible with the requirements of the Treaty and its secondary legislation, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, in regard to imports from other Member States or any form of protection of competing domestic products.

30 The Court has earlier held that a criterion for the charging of higher taxation which by definition can never be fulfilled by similar domestic products cannot be considered to be compatible with the prohibition of discrimination laid down in Article 95 of the Treaty. Such a system has the effect of excluding domestic products in advance from the heaviest taxation (Case 319/81 *Commission* v *Italy* [1983] ECR 601, paragraph 17). Likewise, the Court has held that such differential taxation is incompatible with Community law if the products most heavily taxed are, by their very nature, imported products (Case 106/84 *Commission* v *Denmark* [1986] ECR 833, paragraph 21).

31 The same applies, *a fortiori*, to differential taxation where the criterion for charging a higher rate is the importation itself and where therefore domestic products are by definition excluded from the heaviest taxation.

32 In any event, the discriminatory nature of differential taxation cannot be justified by general considerations based on the differences between international and domestic transport as regards their respective abilities to bear a given fiscal charge without diverting maritime transport to other means of transport and as regards the size of the vessels used depending on whether the transport is domestic or international.

33 Even if such considerations were capable of justifying differential taxation, the fact remains that in a system such as that in question in the main proceedings they are not applied objectively, inasmuch as under that system, domestic transport carried out under the same conditions as international transport is excluded in advance from liability to the same taxation as international transport, and vice versa.

34 It is clear from the Court's case-law (in particular, Case C-152/89 *Commission* v *Luxembourg* [1991] ECR I-3141, paragraphs 20 to 25) that a system of taxation can be considered compatible with Article 95 of the Treaty only if it is proved to be so arranged as to exclude any possibility of imported products being taxed more heavily than domestic products, so that it cannot in any event have discriminatory effect.

35 As for the question of whether a discriminatory duty, such as that in issue in the main proceedings, may escape the prohibition laid down in Article 95 on the ground that it represents consideration for a service, it suffices to recall that, in accordance with the case-law relied on by the defendant ports and the Ministry of Transport (in particular Case 46/76 *Bauhuis* [1977] ECR 5, paragraph 11, and Case C-209/89 *Commission* v *Italy* [1991] ECR I-1575, paragraph 9), the fact that a pecuniary charge constitutes consideration for a service actually supplied to traders and is of an amount commensurate with that service merely enables it to escape classification as a charge having equivalent effect within the meaning of Article 9 et seq. of the Treaty, and does not mean that it escapes the prohibition of all discriminatory internal taxation laid down in Article 95.

36 The defendant ports and the Ministry of Transport claim also that a duty such as that in issue in the main proceedings falls outside the scope of Article 95 of the Treaty and the prohibition which it lays down since that duty pursues legitimate transport policy objectives, namely the financing of commercial ports and charging long-distance sea transport proportionately more than short-distance traffic. They add that it is clear from Case C-49/89 *Corsica Ferries France* [1989] ECR 4441 that charges pursuing a transport policy objective must be assessed in the light of the Treaty rules on transport, in particular Article 84(2), and of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1).

37 It is to be noted that the fact that a tax or levy is a special charge or is appropriated for a specific purpose cannot prevent its falling within the field of application of Article 95 of the Treaty (see Case 74/76 *Iannelli* v *Meroni* [1977] ECR 557, paragraph 19) nor, where appropriate, the prohibition laid down by that provision.

38 Next, it should be pointed out that a charge such as that in issue in the main proceedings is imposed on products and is borne by the recipient or sender of goods, even where it has been levied on the transport of goods or the use of commercial ports and has first to be paid by the vessel or its local agent.

39 It follows that neither *Corsica Ferries France*, cited above, which concerned charges levied on all passengers embarked, disembarked or transferred in certain sea-ports and which were borne by the shipowner, nor Regulation No 4055/86 on the principle of freedom to provide services in maritime transport between Member States and between Member States and third countries, can preclude application of Article 95 of the Treaty.

40 Furthermore, the Court has already ruled that a charge imposed on the transport of goods according, *inter alia*, to the weight of the goods falls within the scope of Article 95 of the Treaty and, in so far as it has an immediate effect on the cost of national and imported products, must be applied in a manner which is not discriminatory to imported products (Case 20/76 *Schöttle* v *Finanzamt Freudenstadt* [1977] ECR 247, paragraphs 15 and 16).

41 As regards the question whether the incompatibility of the charge in issue with Article 95 of the Treaty affects the import surcharge *in toto* or only the increase in the surcharge occurring after the accession of the Kingdom of Denmark to the European Communities, the Act concerning the conditions of accession of the Kingdom of Denmark and the adjustments to the Treaties (OJ 1972 L 73, p. 14) contains no transitional or derogating provision concerning application of Article 95 of the Treaty. Consequently, that provision was applicable to Denmark as soon as it acceded to the European Communities.

42 The Court has consistently held that if a charge is incompatible with Article 95 of the Treaty, it is prohibited to the extent to which it discriminates against imported products (see, to this effect, Case 68/79 *Just* [1980] ECR 501, paragraph 14, and Case C-72/92 *Scharbatke* [1993] ECR I-5509, paragraph 10).

43 It follows that a charge such as that in issue in the main proceedings is to be considered to be incompatible with Article 95 and prohibited by it only to the amount of the surcharge levied on imported goods.

44 That being so, the answer to be given to the first four questions must be that it is contrary to Article 95 of the Treaty for a Member State to impose a 40% import surcharge on a general duty levied on goods loaded, unloaded, or otherwise taken

on board or landed within its ports or in the deep-water approach channels to its ports where goods are imported by ship from another Member State.

Question 5

45 By this question, the national court is asking in substance whether, where a claim for repayment is based on infringement of Article 95 of the Treaty, it is lawful under Community law to apply a rule of national law under which legal proceedings for recovery of charges unduly paid are time-barred after a period of five years, even when the effect of that rule is to prevent, in whole or in part, the repayment of those charges.

46 It should first be recalled that it is settled case-law that in the absence of Community rules governing a matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for recovery of sums unduly paid, provided, however, that such rules may not be less favourable than those governing similar domestic actions and may in no circumstances be so framed as to render virtually impossible or excessively difficult in practice the exercise of rights conferred by Community law (see, in particular, Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12, and Case C-212/94 *FMC* [1996] ECR I-389, paragraph 71).

47 That case-law is also applicable to national time-limits which, if unobserved, bar proceedings (see in particular, in addition to *FMC* and *Emmott*, cited above, Case C-33/76 *Rewe* [1976] ECR 1989 and Case 45/76 *Comet* [1976] ECR 2043).

48 It is apparent from the case-law, in particular from the *Rewe* and *Comet* judgments, that the laying down of reasonable limitation periods, which is an application of the fundamental principle of legal certainty, satisfies the two conditions referred to above and, in particular, cannot be regarded as rendering virtually impossible or excessively difficult the exercise of rights conferred by Community law, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought.

49 Finally, a limitation period of five years, such as that in issue in the main proceedings, must be considered to be reasonable.

50 It follows from the foregoing considerations that application of such a period to claims for repayment based on breach of Article 95 is not contrary to Community law as it now stands, even if the effect is to prevent, in whole or in part, the repayment sought.

51 Contrary to Haahr Petroleum's arguments before the national court and in its observations before the Court, *Emmott* does not invalidate that conclusion.

52 In paragraph 17 of that judgment, the Court expressly recounted the principle that the fixing of reasonable time-limits which, if unobserved, bar proceedings, satisfies the conditions laid down in the decisions referred to. It was only because of the particular nature of directives and having regard to the specific circumstances of that case that the Court held, in paragraph 23, that until such time as a directive has been properly transposed into domestic law, a Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon him by the provisions of the directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time.

53 Since the claim for reimbursement referred to in Question 5 is not based on the direct effect of a directive incorrectly transposed into domestic law, but rather on the effect of a provision of the Treaty, the answer to this question must be that application to a claim for repayment based on breach of Article 95 of a rule of national law under which proceedings for recovery of charges unduly paid are time-barred after a period of five years is not contrary to Community law, even if the effect of that rule is to prevent, in whole or in part, the repayment of those charges.

Costs

54 The costs incurred by the United Kingdom Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Østre Landsret by order of 8 March 1994, hereby rules:

1. **It is contrary to Article 95 of the EEC Treaty for a Member State to impose a 40% import surcharge on a general duty levied on goods loaded, unloaded, or otherwise taken on board or landed within its ports or in the deep-water**

approach channels to its ports where goods are imported by ship from another Member State.

2. Application to a claim for repayment based on breach of Article 95 of a rule of national law under which proceedings for recovery of charges unduly paid are time-barred after a period of five years is not contrary to Community law, even if the effect of that rule is to prevent, in whole or in part, the repayment of those charges.

Mancini Murray Kapteyn

Delivered in open court in Luxembourg on 17 July 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber